

ORIGINAL

BELLSOUTH

Kathleen B. Levitz
Vice President-Federal Regulatory

August 17, 1999

EX PARTE OR LATE FILED

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1133-21st Street, N.W.
Washington, D.C. 20036-3351
202 463-4113
Fax: 202 463-4198
Internet: levitz.kathleen@bsc.bls.com

WRITTEN EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TWB-204
Washington, D.C. 20554

RECEIVED

AUG 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-98

Dear Ms. Salas:

This is to give notice that on August 17, 1999 I sent the attached written ex parte to: Christopher Wright, the Commission's General Counsel; Kyle Dixon, Legal Advisor to Commissioner Powell; Sarah Whitesell, Legal Advisor to Commissioner Tristani; William Bailey, Legal Advisor to Commissioner Furchtgott-Roth; Linda Kinney, Legal Advisor to Commissioner Ness; and Dorothy Atwood, Legal Advisor to Chairman Kennard.

In accordance with Section 1.1206(b)(1), I am filing two copies of this notice in the docket identified above. If you have any questions concerning this, please call me.

Sincerely,



Kathleen B. Levitz
Vice President - Federal Regulatory

Attachment

cc: Christopher Wright
Kyle Dixon
Sarah Whitesell
William Bailey
Linda Kinney
Dorothy Atwood

No. of Copies rec'd 0+2
List ABCDE

Kathleen B. Levitz
Vice President-Federal Regulatory

August 17, 1999

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WRITTEN EX PARTE

Mr. Christopher Wright, General Counsel
Office of the General Counsel
Federal Communications Commission
Room 8-C762
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Wright:

The Common Carrier Bureau asked BellSouth to prepare a legal memorandum discussing the question of when access to a network element may be lawfully restricted. Attached is the letter BellSouth submitted to the staff in response to the latter's request.

We hope that you find the analysis contained in that letter useful as you continue your deliberations on the issues raised in the UNE Remand proceeding. If after reviewing the letter, you have any questions, please call me at 202.463.4113.

In accordance with Section 1.1206(b)(1), I am filing two copies of this written ex parte presentation with the Secretary of the Commission and am requesting that it be associated with the record of CC Docket No. 96-98.

Sincerely,



Kathleen B. Levitz
Vice President – Federal Regulatory

Attachment

Kathleen B. Levitz
Vice President-Federal Regulatory

August 17, 1999

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Washington, D.C. 20036-3351
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WRITTEN EX PARTE

Mr. Kyle Dixon
Legal Advisor to Commissioner Powell
Federal Communications Commission
Room 8-A204
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Dixon:

The Common Carrier Bureau asked BellSouth to prepare a legal memorandum discussing the question of when access to a network element may be lawfully restricted. Attached is the letter BellSouth submitted to the staff in response to the latter's request.

We hope that you find the analysis contained in that letter useful as you continue your deliberations on the issues raised in the UNE Remand proceeding. If after reviewing the letter, you have any questions, please call me at 202.463.4113.

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Sincerely,



Kathleen B. Levitz
Vice President – Federal Regulatory

Attachment

Kathleen B. Levitz
Vice President-Federal Regulatory

August 17, 1999

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Washington, D.C. 20036-3351
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WRITTEN EX PARTE

Ms. Sarah Whitesell
Legal Advisor to Commissioner Ness
Federal Communications Commission
Room 8-C302
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

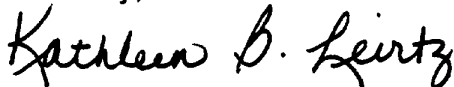
Dear Ms. Whitesell:

The Common Carrier Bureau asked BellSouth to prepare a legal memorandum discussing the question of when access to a network element may be lawfully restricted. Attached is the letter BellSouth submitted to the staff in response to the latter's request.

We hope that you find the analysis contained in that letter useful as you continue your deliberations on the issues raised in the UNE Remand proceeding. If after reviewing the letter, you have any questions, please call me at 202.463.4113.

In accordance with Section 1.1206(b)(1), I am filing two copies of this written ex parte presentation with the Secretary of the Commission and am requesting that it be associated with the record of CC Docket No. 96-98.

Sincerely,



Kathleen B. Levitz
Vice President – Federal Regulatory

Attachment

Kathleen B. Levitz
Vice President-Federal Regulatory

August 17, 1999

Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351
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WRITTEN EX PARTE

Mr. William Bailey
Legal Advisor to Commissioner Furchtgott-Roth
Federal Communications Commission
Room 8-A302
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

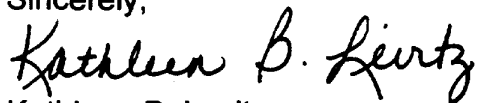
Dear Mr. Bailey:

The Common Carrier Bureau asked BellSouth to prepare a legal memorandum discussing the question of when access to a network element may be lawfully restricted. Attached is the letter BellSouth submitted to the staff in response to the latter's request.

We hope that you find the analysis contained in that letter useful as you continue your deliberations on the issues raised in the UNE Remand proceeding. If after reviewing the letter, you have any questions, please call me at 202.463.4113.

In accordance with Section 1.1206(b)(1), I am filing two copies of this written ex parte presentation with the Secretary of the Commission and am requesting that it be associated with the record of CC Docket No. 96-98.

Sincerely,



Kathleen B. Levitz
Vice President-Federal Regulatory

Attachment

Kathleen B. Levitz
Vice President-Federal Regulatory

August 17, 1999

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Washington, D.C. 20036-3351
202 463-4113
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WRITTEN EX PARTE

Ms. Linda Kinney
Legal Advisor to Commissioner Susan Ness
Federal Communications Commission
Room 8-B115
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

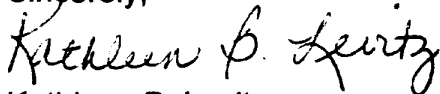
Dear Ms. Kinney:

The Common Carrier Bureau asked BellSouth to prepare a legal memorandum discussing the question of when access to a network element may be lawfully restricted. Attached is the letter BellSouth submitted to the staff in response to the latter's request.

We hope that you find the analysis contained in that letter useful as you continue your deliberations on the issues raised in the UNE Remand proceeding. If after reviewing the letter, you have any questions, please call me at 202.463.4113.

In accordance with Section 1.1206(b)(1), I am filing two copies of this written ex parte presentation with the Secretary of the Commission and am requesting that it be associated with the record of CC Docket No. 96-98.

Sincerely,



Kathleen B. Levitz
Vice President – Federal Regulatory

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Kathleen B. Levitz
Vice President-Federal Regulatory

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WRITTEN EX PARTE

Ms. Dorothy Atwood
Legal Advisor to Chairman Kennard
Federal Communications Commission
Room 8-B201
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

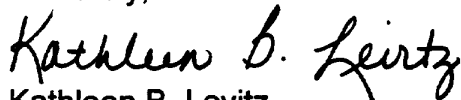
Dear Ms. Atwood:

The Common Carrier Bureau asked BellSouth to prepare a legal memorandum discussing the question of when access to a network element may be lawfully restricted. Attached is the letter BellSouth submitted to the staff in response to the latter's request.

We hope that you find the analysis contained in the attached letter useful as you continue your deliberations on the issues raised in the UNE Remand proceeding. If after reviewing the letter, you have any questions, please call me at 202.463.4113.

In accordance with Section 1.1206(b)(1), I am filing two copies of this written ex parte presentation with the Secretary of the Commission and am requesting that it be associated with the record of CC Docket No. 96-98.

Sincerely,



Kathleen B. Levitz
Vice President – Federal Regulatory

Attachment

BELLSOUTH

David G. Frolio
General Attorney

Legal Department-Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351
202 463-4182
Fax: 202 463-4195

August 9, 1999

WRITTEN EX PARTE

**PLEASE DATE-STAMP
AND RETURN**

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TWB-204
Washington, D.C. 20554

RECEIVED
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OFFICE OF THE SECRETARY

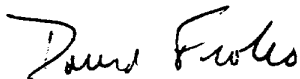
Re: CC Docket No. 96-98

Dear Ms. Salas:

The attached written ex parte was sent today by facsimile to Lawrence Strickling, Chief of the Common Carrier Bureau and Carol Matthey, Chief of that Bureau's Policy and Program Planning Division.

In accordance with Section 1.1206(b)(1), I am filing two copies of this notice and that ex parte for inclusion in the docket identified above. If you have any questions concerning this filing, please call me at (202) 463-4113.

Sincerely,



David G. Frolio

Attachment

cc: Lawrence Strickling
Carol Matthey
Jake Jennings
Claudia Fox

William B. Barfield
Associate General Counsel

BellSouth Corporation
Legal Department-Suite 1800
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
Telephone: 404 249-2641
Facsimile: 404 249-5901

August 9, 1999

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

EX PARTE RE: Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996; UNE Remand Proceeding,
CC Docket No. 96-98

Dear Mr. Strickling,

A number of interexchange carriers and CLECs have claimed in this docket an unqualified right to obtain and use unbundled local loops and unbundled local transport, at cost-based prices, solely for exchange access services. This loop/transport combination would be a direct (and often physically identical) substitute for the incumbent LEC's regulated access services – but obtainable at UNE prices that do not reflect the network costs currently covered by access charges. Interexchange carriers could thus use the incumbent's network without paying their assigned share of the incumbent's costs. For their part, CLECs could arbitrage the difference between cost-based UNE rates and regulated access charges, making a handsome profit without building any facilities or differentiating their access service in any way from the incumbent's. In the case of interstate access charges, such bypass would mean that costs allotted to the interstate jurisdiction would have to be recovered in some other way, or else shifted to intrastate jurisdictions. In the case of intrastate access charges, forcing incumbent LECs to provide steeply discounted access services for interexchange carriers would either increase the incumbent's local rates or undermine universal service, or both.

A necessary premise of the carriers' argument is that loop and transport are UNEs for all customers in all areas. Obviously if that is not true, as discussed below, then loop/transport cannot be required in any area where one of the two elements is not required. Even in areas where both are required, however, the Communications Act, agency decisions, and judicial precedent give the Commission wide latitude to authorize the imposition of conditions on use of UNEs in order to protect the interstate access charge regime. Indeed, the statute arguably requires the Commission to permit such protective measures by incumbent LECs, at least during the period while access charges still support universal service. Moreover, the Commission itself

has already arguably forbidden use of local loops for access bypass and it has issued a Notice of Proposed Rulemaking regarding use of unbundled transport to bypass access services.

1. Any claim of a right to use loop/transport combinations for bypass must, as an initial matter, confront the Supreme Court's holding in AT&T Corp. v. Iowa Utilities Board, 119 S. Ct. 721 (1999). That decision established that network elements must be provided under the terms of sections 251 and 252 only if the "necessary" and "impair" standards of section 251(d)(2) are satisfied. Given the ready availability of facilities from sources other than incumbent LECs, it is highly unlikely that CLECs could make the requisite showing, at least in Zones 1 and 2, for both loops and transport. This is particularly true where loop/transport is intended as a substitute for special access. Section 251(d)(2) only requires access for non-proprietary elements if "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2)(B) (emphasis added). Accordingly, in judging whether a particular network element needs to be supplied, the Commission is inherently making a "service-related" decision.¹

Since special access is a highly competitive service – at least for many customers in many areas – refusal to provide access to loops and transport for the provision of special access would not "impair the ability of the telecommunications carrier seeking such access to provide the [special access] services that it seeks to offer." Furthermore, to the extent that loop/transport combinations would require an incumbent LEC to provide access to new UNE combinations, it is subject to the Eighth Circuit's holding (not challenged before the Supreme Court) that incumbents need not establish new UNE combinations for other carriers. See Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997), aff'd in part, rev'd in part sub nom. AT&T v. Iowa Utils. Bd., 119 S. Ct. 721 (1999).

¹ We recognize that, in its Local Competition Order, the Commission stated that "Section 251(c)(3) does not impose any service-related restrictions or requirements on requesting carriers in connection with the use of unbundled elements." First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15634, ¶ 264 ("Local Competition Order"), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F. 3d 753 (8th Cir. 1997), rev'd in part, aff'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999). But the Commission's rationale for that holding was its premise that "network elements are defined by facilities or their functionalities or capabilities, and thus, cannot be defined as specific services." Id. Since the Commission concluded that network elements, so defined, must be unbundled wherever "technically feasible," it also concluded that "incumbent LECs may not impose restrictions upon the uses to which requesting carriers put such network elements." Id. at 15514-15, ¶ 27. The Supreme Court, however, expressly rejected the Commission decision to require "blanket access to incumbents' network elements" on such an "unrestricted" basis. AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. at 735. Instead, the Court stressed, the Commission must give effect to section 251(d)(2), which only requires access for non-proprietary elements if "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2)(B).

2. Even aside from section 251(d)(2), section 251(c)(3) itself expressly permits the incumbent LEC to impose "just, reasonable, and nondiscriminatory" conditions on use of its UNEs. 47 U.S.C. § 251(c)(3). Requiring carriers that use UNEs for access to serve local end users meets this test for two principal reasons: it protects incumbent LECs' "receipt of compensation" from access charges as required by section 251(g), and it safeguards universal service until new funding mechanisms are in place. See Competitive Telecomms. Ass'n ("CompTel") v. FCC, 117 F.3d 1068, 1074-75 (8th Cir. 1997) (explaining that "Congress did not intend that universal service should be adversely affected by the institution of cost-based rates" for UNEs); Texas Office of Pub. Util. Counsel v. FCC, No. 97-60421, 1999 U.S. App. LEXIS 17941, at *103 (5th Cir. July 30, 1999) ("defer[ing] to the agency's reasonable judgment about what will constitute 'sufficient' support during the transition period from one universal service system to another"). Nothing in section 251 or any other provision of the 1996 Act precludes the Commission from taking such considerations into account. As the Commission itself has explained, section 251(g) illustrates Congress's awareness of the immediate, practical need to continue access charge recoveries that continue to fund universal service, notwithstanding incumbent LECs' interconnection and unbundling duties under section 251. Local Competition Order, 11 FCC Rcd at 15867, ¶ 726.

In its Local Competition Order, the Commission stressed that the UNE provisions of section 251, access charges, and universal service issues are "intensely interrelated." Id. at 15507, ¶ 8. Universal service reform pursuant to section 254 is necessary to eliminate regulatory pricing distortions – such as recovery of fixed network costs through traffic-sensitive access charges – that impede full competition. See id. at 15506-08, 15863, ¶¶ 5, 9, 718. The Commission pledged to do this "by completing our pending universal service proceeding to implement section 254 . . . and by addressing access charge issues." Id. at 15862, ¶ 716. The Commission recognized, however, that "implementation of the [UNE] requirements of section 251 now, without taking into account the effects of the new rules on our existing access charge and universal service regimes, may have significant, immediate, adverse effects that were neither intended nor foreseen by Congress." Id. The Commission accordingly adopted a temporary plan that required carriers to pay access charges to the incumbent LEC when they used UNEs to provide access services to their local customers. Id. at 15864-66, ¶¶ 721-725.

The Commission cited "ample legal authority" to implement its plan, including sections 4(i) and 251(g) of the Communications Act. Id. at 15866-67, ¶ 726. Furthermore, the Commission rounded out its legal analysis by noting that allowing carriers to purchase UNEs as a substitute for access services, and thereby avoid contributing to universal service, "would be undesirable as a matter of both economics and policy." Id. at 15863, ¶ 719. "[C]arrier decisions about how to interconnect with incumbent LECs would be driven by regulatory distortions in our access charge rules and our universal service scheme, rather than unfettered operation of a

competitive market." Id. The Commission resolved not to "allow[] such a result before we have reformed our universal service and access charge regimes." Id.

On review, the Eighth Circuit strongly agreed with the Commission that imposing access charges on UNE-based access providers was consistent with the statutory scheme. Competitive Telecomms. Ass'n ("CompTel") v. FCC, 117 F.3d 1068. The 1996 Act "plainly preserves" access charges, id. at 1072, and it was reasonable for the Commission temporarily to balance the statutory command of cost-based UNE pricing with "another major purpose of the Act" – supporting universal service, id. at 1074. That principle dictates restrictions on use of loop/transport combinations to bypass interstate access charges during the period while this Commission eliminates universal service support from federal access charges. See generally Texas Office of Pub. Util. Counsel, 1999 U.S. App. LEXIS 17941, at *64-*66 (requiring Commission to remove universal service subsidies from access charges).

3. In its Local Competition Order, the Commission stated a general rule on which the interexchange carriers build their case: "section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers, to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers." 11 FCC Rcd at 15679, ¶ 356. But, under a series of holdings in this docket, this general rule has no application to loop/transport combinations.

The Commission explained in the Local Competition Order that it expected carriers to use unbundled loops to provide both local exchange and exchange access services, not simply for access bypass. Id. at 15679, ¶¶ 356-57. The Department of Justice and AT&T had argued that, if entry into the local exchange was to be viable, carriers must be allowed to provide access services as well as local services over UNEs. "[N]ew entrants," they claimed, "will need the revenue streams from both [local exchange and exchange access] services to support the high cost of constructing competing local exchange facilities." Id. at 15672-73, ¶ 346. Taking AT&T at its word, the Commission made clear that since local loops are dedicated exclusively to one carrier, it expected purchasers of loops to satisfy the end user's requirements for both local services and access to interexchange services. Id. at 15679, ¶ 357.

In its Reconsideration Order,² the Commission looked specifically at switching and addressed whether interexchange carriers or competitive access providers "may purchase access to an incumbent LEC's unbundled switch in order to originate or terminate interexchange traffic

² Order on Reconsideration, 11 FCC Rcd 13042 (1996) ("Reconsideration Order"), vacated in part on other grounds, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part, AT&T v. Iowa Utils. Bd., 119 S. Ct. 721 (1999).

to customers for whom they do not provide local exchange service." 11 FCC Rcd at 13047, ¶ 10. The Commission answered that question in the negative, explaining that the switching element (like the local loop) generally is dedicated to a single customer. Id. at 13048, ¶ 11. For this reason, and because the Commission's pricing rules "contemplated that the carrier purchasing the unbundled switch would provide switching for both local exchange and exchange access services," id., the Commission held that "[a] requesting carrier that purchases an unbundled local switching element for an end user may not use that switching element to provide interexchange service to end users for whom that requesting carrier does not also provide local exchange service." Id. at 13049, ¶ 13 (emphasis added).

The Third Reconsideration Order and Further NPRM addressed the same issues with respect to transport, the last of the three major network elements. Third Order on Reconsideration and Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecomms. Act of 1996, 12 FCC Rcd 12460 (1997), aff'd sub nom. SBC v. FCC, 153 F.3d 597 (8th Cir. 1998). Here, the Commission reiterated its rule that "if a requesting carrier purchases access to a network element in order to provide local exchange service, the carrier may also use that element to provide exchange access and interexchange services." Id. at 12483, ¶ 39 (emphasis added). The Commission then sought comment on the question it already had addressed in the case of loops and switching: whether carriers may use dedicated and shared unbundled transport facilities exclusively to provide access services, without also providing the end user's local service. Id. at 12494-96, ¶¶ 60-61. The Commission explained that the question was whether there should be "restrictions requiring carriers to provide local exchange service in order to purchase unbundled shared or dedicated transport facilities." Id. at 12496, ¶ 61.³ The Commission has not yet answered its own question.

Thus, using loop/transport combinations solely for access bypass both violates the Commission's stated understanding that loops will be used to provide local service to end users, and ignores the pending Notice of Proposed Rulemaking on use of transport solely for access. The Commission arguably forbade such bypass through its Local Competition Order, and at a minimum has taken the question under advisement in the Third Reconsideration Order and Further NPRM. Under no credible reading of the Commission's orders did the Commission approve use of loop/transport combinations to bypass access services.

³ The Commission made clear that its Further NPRM applies to dedicated as well as shared transport. See 12 FCC Rcd at 12462, ¶ 3 (Further NPRM seeks "comment on whether requesting carriers may use dedicated transport facilities to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service"); id. at 12484, ¶ 39 n.102 (Further NPRM seeks "comment on whether carriers may use dedicated and shared unbundled transport facilities to carry originating to, and terminating access traffic from, [a] customer to whom the requesting carrier does not also provide local exchange service.").

4. Allowing CLECs (or interexchange carriers themselves) to purchase loops and transport at TELRIC rates as a substitute for tariffed access services would render academic federal and state access charges. Interexchange carriers would not pay the tariffed charges, because they could obtain access over the incumbent's same network at a somewhat lower rate, while the access provider (either a CLEC or the interexchange carrier) simultaneously earned a large profit by arbitraging the difference between regulated access rates and TELRIC-based UNE prices. High-volume long distance customers would have dedicated lines for exchange access, while the incumbent LEC would be left to carry local traffic without earning any access revenues. The result would be the end of access charges as a viable means of recovering the costs of universal service, even though the incumbent still would bear the very same expense of providing local dialtone services.

Such roundabout termination of the access charge regime – prior to actual elimination of implicit universal service subsidies at either the federal or the state levels – would be inconsistent with the Telecommunications Act of 1996. As the Commission has held, Congress did not intend that universal service would be compromised by elimination of incumbent LECs' access charge recoveries. Local Competition Order, 11 FCC Rcd at 15862, ¶ 716. Accordingly, implementation of section 251 must "tak[e] into account the effects of the new rules on [the] existing access charge and universal service regimes." Id. This is, in fact, a statutory requirement, for section 251(g) preserves existing access charge recoveries until the FCC expressly establishes a new regime. 47 U.S.C. § 251(g).

Nor would consumers, having been saddled with interexchange carriers' prior universal service obligations, receive offsetting benefits in the form of more local competition. The whole issue is whether CLECs and interexchange carriers may provide only access bypass, without also serving the incumbent's end user customers. Indeed, access bypass would actually retard local competition. Unbundled facilities of the incumbent LEC – having been found to satisfy the necessity and impairment tests of section 251(d)(2) – would nevertheless be unavailable to CLECs that want to provide dialtone service.⁴ The only new local competition would come where it is least needed: access services were competitive in most major markets even before the 1996 Act, due to the entry of competitive access providers who themselves have thrived by undercutting access charges that contain implicit subsidies. See Local Competition Order, 11 FCC Rcd at 15506, ¶ 5 (noting competitive access providers' ability to arbitrage incumbent

⁴ In rejecting a proposal that loops be defined in functional terms, the Commission found it "inappropriate" to give interexchange carriers the right to buy unbundled access to loops solely for the purposes of terminating their interexchange services, because that access would prevent another carrier from using the same facility for local services and thereby waste inherent capabilities of the facility. Local Competition Order, 11 FCC Rcd at 15693, ¶ 385. The same problem would exist if interexchange carriers or CLECs could deny end users local service while reserving a local loop and/or transport element exclusively for interexchange access.

Lawrence E. Strickling
August 9, 1999
Page 7

LECs' access prices). All that would be accomplished by UNE-based access bypass would be substitution of a new form of competitive entry (using the incumbent's own network, obtained at TELRIC cost) for an established one (using competitive networks). Such a move away from competition between alternative networks is not what Congress had in mind when it drafted the 1996 Act. See, e.g., S. Conf. Rep. No. 104-230, at 1 (1996) (Act "designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies"); Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, Amendment of the Comm'n's Rules to Establish Competitive Serv. Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Servs., 11 FCC Rcd 16639, 16678-79, ¶ 80 (1996) ("The interconnection provisions of the Act, Sections 251 and 252, are designed to promote facilities-based local exchange competition").

State regulators recognize the threat access bypass presents to universal service and telephone customers. The New York Public Service Commission, for example, has held that loop/transport combinations should be available only "to facilitate local exchange service competition, . . . not as a low priced substitute for special access and private line services which are already competitive." Order Directing Tariff Revisions, Proceeding on Motion of the Commission to Examine Methods by Which Competitive Local Exchange Carriers Can Obtain and Combine Unbundled Network Elements, Case No. 98-C-0690, at 8 (N.Y.P.S.C. Mar. 24, 1999). Commission decisions, the 1996 Act, and the public interest compel this conclusion at the federal level as well.

Sincerely,

A handwritten signature in dark ink, appearing to read "William B. Barfield" followed by a stylized flourish or initials.

William B. Barfield